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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/701,824	05/31/2001	Christer Sinderby	776-009999-U	9202

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PERMAN & GREEN
425 POST ROAD
FAIRFIELD, CT 06824

EXAMINER

WEISS JR, JOSEPH FRANCIS

ART UNIT	PAPER NUMBER
3761	1

DATE MAILED: 03/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

AA

Office Action Summary	Application No. 09/701,824	Applicant(s) Sinderby et al.
	Examiner Joseph Weiss	Art Unit 3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on Jan 16, 2003.
 - 2a) This action is FINAL. 2b) This action is non-final.
 - 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.
- Disposition of Claims**
- 4) Claim(s) 1-59 is/are pending in the application.
 - 4a) Of the above, claim(s) 1-12 and 36-59 is/are withdrawn from consideration.
 - 5) Claim(s) _____ is/are allowed.
 - 6) Claim(s) 13-16 and 24-27 is/are rejected.
 - 7) Claim(s) 17-23 and 28-35 is/are objected to.
 - 8) Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
 - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). <u>1</u> | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Claim Objections

1. Claims 17-23 & 28-35 are objected to under 37 CFR 1.75© as being in improper form because a multiple dependent claim cannot depend from a multiple dependent claim. See MPEP § 608.01(n). Accordingly, the claims have not been further treated on the merits.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 13-16 & 24-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Younes (US 5107830).

In regards to claim 24, Younes discloses a ventilatory having a first input (P sub mus) for receiving a first signal representative of inspiratory effort and which would have an amplitude, a second input (Volume feed back see figs 7 & 9 and supporting text) for receiving a second signal representative of volume and which would have a second amplitude, means for calculating which is fully capable of calculating a relationship between the first and second signals (pre-programmed electronics 22), and a means for increasing or decreasing ventilation assistance depending on whether or not a present calculated value of said relation is higher or lower than a past calculation

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of the relation by an amount exceeding a given threshold (pre-programmed electronics 22). (See graphs and supporting text of figs 1-7)

In regards to claim 25, Younes discloses a calculating means comprising a divider responsive to the ratios at predetermined intervals and an increasing/decreasing means comprising comparator & adder (see the calculations that are the basis of the invention and which are pre-programmed into the electronics 22, col. 9 line 5 - col. 14 line 15).

In regards to claim 26, Younes discloses a means for calculating comprising a means for calculating said relationship at predetermined intervals (note that the calculating means takes measurements over time and in relationship to respiratory events). (See col. 9 line 5- col. 14 line 15)

In regards to claim 27, the device of Younes discloses a means for calculating comprising a means for calculating said relationship that is fully capable of doing so at intervals when one of said first and second amplitudes reaches a predetermined level. (See col. 9 line 5- col. 14 line 15)

In regards to method claims 13-16, one of ordinary skill in the art would appreciate that the method steps claimed in the instant application would naturally flow from the device disclosed in the prior art as noted above and therefore are rejected herein above with respect to claims 24-27.

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 6158432, 6041780, 6015388, 5953713, 5931162, 5915381, 5884622, 5878744,

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5820560, 5794615, 5720278, 5582163, 5535738, 5134995, 5129390, 5044362, 3972327,
3961627

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Joseph F. Weiss, Jr., whose telephone number is (703) 305-0323. The Examiner can normally be reached from Monday-Friday from 8:30 AM to 4:30 PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Weilun Lo, can be reached at telephone number (703) 308-1957. The official fax number for this group is (703) 305-3590 or x3591.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0858.



21 Mar 03



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